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No. 82-1840

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HENRY J. KIRKSEY, *et al.*,
Appellants,

v.

STATE OF MISSISSIPPI and UNITED STATES OF AMERICA,
Appellees.

On Appeal from the United States District Court for the District of Columbia

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BRIEF OPPOSING MOTION TO AFFIRM

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BRIEF OPPOSING MOTION TO AFFIRM

The Solicitor General's arguments in his Motion to Affirm fail to refute appellants' contentions that the District Court erred in denying appellants' motion for leave to intervene in this action brought pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, and that the questions presented in this appeal are substantial. This case presents important issues not only of the Section 5 preclearance authority of the Attorney General "acting in the capacity of a litigant" (*City of Port Arthur* v. *United States*, 103 S.Ct. 530, 534 n. 5 (1982)), but also concerning the principles governing intervention of right under Rule 24(a) of the Federal Rules of Civil

Procedure. This case also is important because of its impact upon the equal voting rights of black voters in Mississippi. What is ultimately at stake in this action is the lawfulness, under Section 5 of the Voting Rights Act, of new statewide legislative reapportionment plans containing 122 House districts and 52 Senate districts which affect the voting rights of 887,206 black citizens of Mississippi, who constitute 35.2 percent of the state's total population.

I. THE DISTRICT COURT'S DENIAL OF THE MOTION TO INTERVENE OF TWENTY-FIVE BLACK VOTERS OF MISSISSIPPI ON BEHALF OF THE CLASS OF ALL BLACK CITIZENS AND BLACK REGISTERED VOTERS OF MISSISSIPPI PRESENTS A SUBSTANTIAL QUESTION

The circumstances of the District Court's denial of intervention in this case represent a manifest injustice. Simultaneously with its denial of appellants' motion to intervene, the District Court also granted the joint motion to dismiss filed by the United States and the State of Mississippi, thereby granting recognition to the Attorney General's unilateral, out-of-court "preclearance" of the House and Senate plans. As a result, appellants, who allege that they represent a defendant class of all black citizens and black registered voters of Mississippi (Answer in Intervention, p. 2), have been denied the opportunity in this case to present their substantial evidence [1] that the House and Senate plans are retrogressive of existing levels of black voting strength and fail to satisfy the requirements of Section 5.

By filing their motion to dismiss, the Justice Department and the State of Mississippi jointly agreed to settle this case and to foreclose any judicial inquiry into

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[1] See affidavit of Robert B. McDuff, filed in the District Court with appellants' Memorandum of Points and Authorities in Opposition to the Motion to Dismiss, attached hereto as an Appendix.

whether or not the state's reapportionment plans meet Section 5 standards. Although normally it may be assumed that the United States adequately represents the public interest in cases of this sort, the United States in its Motion to Affirm filed in this appeal does not contest appellants' contention (J.S., pp. 19-20) that in this case appellants' interests are not represented by the United States, and that appellants' interests are not adequately represented by any of the existing parties. This in itself should be a sufficient ground to reverse the District Court's judgment, to rule that denial of intervention was erroneous, and to remand the case for a full trial on the merits. *See Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 135-36 (1967); *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U.S. 502, 506-08 (1941); 3B J. MOORE & J. KENNEDY, MOORE'S FEDERAL PRACTICE ¶ 24.07[4], pp. 24-67 through 24-73 (2d ed. 1982); C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1909, pp. 519-36, esp. at pp. 530-33 (1972).[2]

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[2] None of the cases denying intervention in Voting Rights Act proceedings, upon which the Government relies, support the denial of intervention here. In *Senate of California* v. *Smith*, Civil No. 81-2767 (D.D.C. April 23, 1982), the District Court did not hold, contrary to the Government's representation (Motion, p. 5 n.4), that there was no intervention of right in Section 5 cases. The court held that the movants, only one of whom lived in a county covered by Section 5, had failed to establish a legally sufficient interest in the action (a finding which is inapplicable here, *infra*, p. 4), and ruled alternatively that the movants had failed to show that their interests were not adequately represented by the Attorney General. Here the Attorney General does not dispute that he does not adequately represent appellants' interests.

Apache County v. *United States*, 256 F. Supp. 903 (D.D.C. 1966), was not a case filed under Section 5 of the Voting Rights Act, but rather was a bailout suit filed under Section 4. Unlike Section 5, there are no decisions holding that Section 4 confers a private right of enforcement on minority voters. *Apache County* also was decided before the 1966 amendments liberalizing the provisions of Rule 24(a)(2), and the prior version required a showing that the

In arguing in support of the judgment below, the United States contends that "[i]t is clear from Section 5 of the Voting Rights Act of 1965 and the decisions of this Court that private litigants do not have a legally cognizable 'interest' in the substantive outcome of any particular Section 5 submission." Motion, p. 3. The Government concedes the obvious, however, when it recognizes that "the implementation of the Mississippi reapportionment plans undeniably may affect the voting rights of the black citizens of Mississippi . . ." *Id.*

The Government's argument that appellants have no legally cognizable interest in this litigation simply cannot be credited; it ignores the entire history of the passage and extension by Congress of the Voting Rights Act. Shortly after the Act was passed, this Court recognized: "The Act was drafted to make the guarantees of the Fifteenth Amendment finally a reality for all citizens," and that it conferred a private right of judicial enforcement upon private litigants. *Allen* v. *State Board of of Elections*, 393 U.S. 544, 556-57 (1969); see also, *Perkins* v. *Matthews*, 400 U.S. 379, 382 (1971). In extending and amending the Act last year, Congress again recognized that the Act was passed to secure the equal voting rights of minority voters.

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movant "is or may be bound by a judgment in the action." See J.S., pp. 18-19.

There is no proof that the recent order of the three-judge District Court in *Busbee* v. *Smith*, Civil No. 82-0665 (D.D.C. March 22, 1982), allowing black voters intervention of right in the Georgia congressional redistricting case was a typographical error (Motion, p. 5 n. 4). Intervenors predicated their motion for leave to intervene almost exclusively on the provisions of Rule 24(a), Memorandum in Support of Petition for Leave to Intervene, *Busbee* v. *Smith*, *supra*, pp. 1-4. The court's acknowledgement that the Attorney General acquiesced in permissive intervention does not necessarily exclude a ruling on movants' motion for intervention of right. If the court order based on Rule 24(a) was a typographical error, as the Government contends, the Attorney General who was a party to that proceeding should have made a motion to correct the error pursuant to Rule 60(a), Fed. R. Civ. P., which he did not do.

> The Voting Rights Act of 1965 was primarily designed to provide swift, administrative relief where there was compelling evidence that, despite a history of litigation, racial discrimination continued to plague the electoral process, *thereby denying minorities the right to exercise effectively their franchise.*

H.R. Rep. No. 97-227, 97th Cong., 1st Sess. 3 (1981) (emphasis added). Thus, it is clear that the United States is wrong to argue that the appellant black voters of Mississippi, whose recorded history of victimization produced the Voting Rights Act and for whose benefit the Act was passed, do not have a substantial legal interest to protect by intervening in this Section 5 action.[3]

The Government's argument that nothing is lost by not allowing these black Mississippi voters intervention in this action because they are free to vindicate their rights through traditional constitutional or statutory litigation in another forum (Motion, p. 3) is inconsistent with the rationale for allowing intervention under Rule 24(a) and should be rejected. The vast majority of cases construing Rule 24(a) hold that simply because proposed intervenors may have another cause of action in another forum is not sufficient to deny intervention of right.[4] Moreover, this is

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[3] The substantial interests of black voters in proper administration by District Courts of the Section 5 preclearance provision was recently recognized by the District Court for the District of Columbia in awarding black Mississippi voters attorneys' fees in a Section 5 case involving Mississippi's congressional districts:

> Intervenors had a substantial interest to protect and were not mere volunteers. That interest was well and fully protected by aggressive participation. Intervenors contributed substantially to the case and are entitled to fees.

Mississippi v. *Smith*, Civil No. 82-0956 (D.D.C. July 8, 1983) (slip op. at 6).

[4] *Smith* v. *Pangilinan*, 651 F.2d 1320, 1325 (9th Cir. 1981); *Newport News Shipbuilding & Drydock Co.* v. *Peninsula Shipbuilders Association*, 646 F.2d 117, 121 (4th Cir. 1981) (possible adverse District Court judgment, even if not entitled to res judicata

one of those instances in which appellants are precluded by the statute from bringing a Section 5 preclearance case themselves in another forum; hence, this is one of those rare cases where appellants have "no remedy to litigate [their] question [of whether these plans meet Section 5 standards], except by intervening." *Washington* v. *United States*, 87 F.2d 421, 434 (9th Cir. 1936).

Further, and more important here, the Justice Department's argument defeats the intent and rationale of Congress in enacting the Section 5 preclearance procedure. Congress enacted this "uncommon exercise of congressional power" (*South Carolina* v. *Katzenbach*, 383 U.S. 301, 334 (1966)) for the very reason that traditional constitutional and statutory voting rights litigation was found to be inadequate to protect minority voters from new forms of voting discrimination.[5]

The very argument made by the United States here was made by the State of Mississippi in resisting any private enforcement of the protections of Section 5, and was de-

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or collateral estoppel effect, created "the kind of 'practical disadvantage' that has been thought sufficient to warrant interventions of right."); *Natural Resources Defense Council, Inc.* v. *United States Nuclear Regulatory Commission*, 578 F.2d 1341, 1345 (10th Cir. 1978) ("Hence, to say that it can be repeatedly litigated is not an answer, for the chance of a contrary result in a case which is substantially similar on its facts to one previously adjudicated seems remote."); *Nuesse* v. *Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967); *Atlantis Development Corp.* v. *United States*, 379 F.2d 818, 829 (5th Cir. 1967).

[5] Congress found that "case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits." *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 328 (footnote omitted). Because of this, and "[a]fter enduring nearly a century of systematic resistance to the Fifteenth Amendment," Congress decided to enact Section 5 "to shift the advantage of time and inertia from the perpetrators of the evil to its victims." *Id.*

cisively answered by this Court in *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 556 n. 21:

> Of course the private litigant could always bring suit under the Fifteenth Amendment. But it was the inadequacy of just these suits for securing the right to vote that prompted Congress to pass the Voting Rights Act.

The effect of the Government's argument is to nullify the salutary protections of Section 5 and to remand these black voters of Mississippi to the same type of traditional case-by-case constitutional litigation which proved inadequate to protect their voting rights in the first place.

For these reasons, all the requirements for intervention of right under Rule 24(a) have been met in this case, and the District Court erred in denying appellants' motion for leave to intervene.

II. APPELLANTS HAVE STANDING TO RAISE THE ISSUE OF THE DISTRICT COURT'S DECISION TO DISMISS THIS CASE AS MOOT

The Government's contention that appellants lack standing to contest, in this appeal, the District Court's decision to dismiss this action as moot (Motion, p. 5) is erroneous and should be rejected. The mootness issue is inextricably related to the intervention question. If the Court determines that the District Court erred in denying intervention, then it must necessarily decide whether or not the District Court erred in dismissing this case as moot, since there is no point in remanding to permit appellants to intervene in a moot case. Similarly, if the Court determines that the case is not moot, then it must remand to the District Court to allow intervention, since the District Court's decision to deny intervention was based in substantial part on its decision that the case was moot. Thus, because the District Court's merits ruling and its ruling on the intervention question are so closely interconnected, appellants do have standing to present the

question that the case is not moot because the Attorney General lacks the authority to preclear a voting change once a Section 5 declaratory judgment action has been filed. Cf. *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co., supra*, 386 U.S. at 136.[6]

The Solicitor General's argument that "[t]he District Court did not abuse its discretion in denying intervention under Rule 24(b), Fed. R. Civ. P., for the case was moot as between the parties" (Motion, p. 5) illustrates how the questions of intervention and mootness are linked. Because the Attorney General lacked the authority to grant Section 5 preclearance to these reapportionment plans, the case is not moot between the parties, and the District Court's denial of permissive intervention for this reason was erroneous as a matter of law. This case is entirely different from *City of Dallas* v. *United States*, 482 F. Supp. 183 (D.D.C. 1979), upon which the United States relies. In that case the City of Dallas filed a Section 5 declaratory judgment action in the District Court for the District of Columbia seeking preclearance of a city council redistricting plan. After the action was filed, the original plan, which was the subject of the declaratory judgment action, was withdrawn. The city then drew up a new plan, which it submitted for administrative review by the Attorney General and which the Attorney General precleared. Thus, the administrative preclearance in *City of Dallas* involved an entirely different plan, while here the Attorney General purported to preclear *the very same plan* at issue in the District Court litigation.

Appellants do not claim, as the Solicitor General contends, that they have a private right of action to challenge

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[6] *Brennan* v. *Silvergate District Lodge No. 50*, 503 F.2d 800 (9th Cir. 1974), which the Justice Department cites, is not applicable here. The Ninth Circuit held that it did not have to decide whether to reverse the District Court's judgment on the merits because intervention had been properly denied. *Id.* at 803.

a Section 5 preclearance granted by the Attorney General (Motion, p. 4). As we previously showed (J.S., pp. 7-8), appellants are not challenging the merits of the Attorney General's purported Section 5 approval of Mississippi's reapportionment plans. Rather, appellants contend that this Court's rulings in *City of Port Arthur* v. *United States*, 103 S.Ct. 530 (1982), and *City of Richmond* v. *United States*, 422 U.S. 358 (1975), deny the Attorney General the authority, once a Section 5 lawsuit has been filed in District Court, unilaterally as a litigant to "dictate the court's conclusion as to the acceptability of the plan under § 5." 103 U.S. at 534 n. 5.[7]

Contrary to the Government's argument, such a result does not mean that the submitting jurisdiction and the Attorney General must be "locked into an adversarial contest that must inevitably proceed to judgment on the merits" (Motion, p. 6), precluding voluntary dismissal or settlement of the litigation. Section 5 cases have been, and could still be, voluntarily dismissed by the plaintiff,[8]

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[7] The Justice Department appears to have conceded as much in its brief filed in *City of Port Arthur*:

> Section 5 assigns primary responsibility to the United States District Court for the District of Columbia to review voting changes submitted to it for preclearance. While the Attorney General becomes a party-litigant on behalf of the United States in any such suit he is not in such circumstances assuming his special role under Section 5. Thus, the determination of whether a particular plan has been shown to be free of discriminatory purpose and effect rests ultimately with the district court following commencement of a Section 5 suit—whether or not agreement can be obtained from the Attorney General.

Brief for the United States, p. 30, *City of Port Arthur* v. *United States*, *supra*.

[8] For example, in the recent Mississippi congressional redistricting case brought pursuant to Section 5, *Mississippi* v. *Smith*, 541 F. Supp. 1329 (D.D.C. 1982), *stay denied*, 51 U.S.L.W. 3720 (U.S. April 4, 1983), *appeal dism'd*, 51 U.S.L.W. 3789 (U.S. May 2, 1983) (No. 82-540), in which some of the appellants here were intervenors

and settlement could still be reached. All that would be precluded is what is normally precluded in traditional litigation—settlement of the merits without the concurrence of all the parties in interest.

CONCLUSION

For these reasons, and on the basis of the authorities cited, the judgment of the District Court denying intervention and dismissing this case as moot should be reversed.

Respectfully submitted,

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and who were represented by the same attorneys as here, the State of Mississippi was able to take a voluntary dismissal prior to trial. Order of April 11, 1983.

** Appellants gratefully acknowledge the assistance of Mark E. Haddad, a student at the Yale Law School, in writing this brief.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-2673

STATE OF MISSISSIPPI,
Plaintiff,

v.

THE UNITED STATES OF AMERICA,
Defendant,

and

HENRY J. KIRKSEY, *et al.*,
Applicants for Intervention.

AFFIDAVIT OF ROBERT B. McDUFF

1. My name is Robert B. McDuff. I am an attorney, licensed to practice in the States of Tennessee and Texas, and a member of the bar of United States District Courts for the Western District of Tennessee and the Eastern District of Texas. I am currently working with the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law in a review of the 1982 Mississippi legislative redistricting.

2. I have reviewed the election returns for the 1979 Mississippi legislative election contests. I have learned which candidates and election victors are black from the appendix to the State of Mississippi's Motion to Affirm filed in the United States Supreme Court in the previous combined cases of *Henry* v. *State of Mississippi* (No. 79-528) and *United States* v. *Mississippi* (No. 79-504), 444 U.S. 1050 (1980).

3. I have reviewed the estimates of racial composition according to the 1980 Census for the districts under the

currently existing plan (adopted by the Mississippi legislature in 1978) and also under the 1982 plan as provided to the United States Department of Justice by the State of Mississippi in its Section 5 submission for the 1982 plan.

4. The information described above shows that no black candidate for the Mississippi House of Representatives was elected under the 1978 plan from a district whose black voting age population (VAP) was under 60 percent black, with the exception of District 119 on the Mississippi Gulf Coast. It also demonstrates that no black candidate was elected from any district in the Mississippi Delta with a black VAP under 65.91 percent. Additionally, no black candidate was elected to the Mississippi Senate from a district with a black VAP less than 69 percent, while black candidates for the Mississippi Senate lost in Districts with black VAPs as high as 61.76 percent (District 37) and 59.16 percent (District 13).

5. The information described above shows that, of the 19 House districts in the 1978 plan with a black VAP over 60 percent, black candidates won 14. The number of districts with a black VAP exceeding 60 percent is decreased from 19 in the 1978 plan to 16 in the 1982 plan.

6. The information described above demonstrates that, of the 14 districts in the 1978 plan with black VAPs over 65 percent, 11 were won by black candidates. The number of districts with a black VAP exceeding 65 percent is decreased from 14 in the 1978 plan to 9 in the 1982 plan.

7. The chart attached as Exhibit A, compiled from the information described above, lists each 1978 state House district whose population was over 40 percent black according to 1970 or 1980 Census data, and identifies the

corresponding district in the 1982 plan. (The corresponding relationships between particular districts in the two plans was provided by the State in its Section 5 submission to the Justice Department.) The chart then compares the black percentage of total population and voting age population for the 1978 districts and the 1982 districts, according to 1980 census data. Asterisks indicate those districts currently served by black incumbents.

8. The following summary is derived from the chart in Exhibit A and compares the numbers of districts with designated black population and VAP percentages in the 1978 and 1982 plans for the State House of Representatives.

	State House of Representatives			
	Number of Districts			
	Total Population		VAP	
% Black	1978 Plan	1982 Plan	1978 Plan	1982 Plan
40-50%	15	13	16	12
50-60%	11	8	6	10
60-65%	4	9	5	7
65-70%	7	7	8	2
70-80%	6	6	2	6
80-90%	4	2	3	0
Over 90%	1	1	1	1
Totals				
Over 40%	48	46	41	38
Over 50%	33	33	25	26
Over 60%	22	25	19	16
Over 65%	18	16	14	9
Over 70%	11	9	6	7
Over 80%	5	3	4	1

9. The chart attached as Exhibit B, compiled from the information described above, lists each 1978 State Senate district whose population was over 40 percent black according to 1970 or 1980 census data, and identifies the corresponding district in the 1982 plan. (The corresponding relationships between particular districts in the two

plans was provided by the State in its Section 5 submission to the Justice Department.) The chart then compares the black percentage of total population and voting age population for the 1978 districts and the 1982 districts, according to 1980 census data. Asterisks indicate those districts currently served by black incumbents.

10. The following summary is derived from the chart in Exhibit B and compares the numbers of districts with designated black population and VAP percentages in the 1978 and 1982 plans for the State Senate.

	State Senate			
	Number of Districts			
	Total Population		VAP	
% Black	1978 Plan	1982 Plan	1978 Plan	1982 Plan
40-50%	4	4	6	4
50-60%	7	7	8	6
70-80%	1	0	0	0
Over 80%				
Totals				
Over 40%	18	17	17	14
Over 50%	14	13	11	10
Over 60%	7	6	3	4
Over 65%	2	3	2	2
Over 70%	2	2	1	1
Over 80%	1	0	0	0

11. I have reviewed the maps and statistical information pertinent to an alternative Mississippi legislative redistricting plan designed by State Senator Henry Kirksey, one of the applicants for intervention in this action. The following chart lists the number of districts in Senator Kirksey's plan which fall within the designated categories reflecting black total population percentages.

Kirksey Plan—House of Representatives

Black %	Total Population Number of Districts
40-50%	7
50-60%	6
60-65%	11
65-70%	7
70-80%	6
Over 80%	5
Totals	
Over 40%	42
Over 50%	35
Over 60%	29
Over 65%	18
Over 70%	11
Over 80%	5

Kirksey Plan—Senate

Black %	Total Population Number of Districts
40-50%	5
50-60%	2
60-65%	2
65-70%	6
70-80%	0
80% and over	1
Totals	
Over 40%	16
Over 50%	11
Over 60%	9
Over 65%	7
Over 70%	1
Over 80%	1

12. The information described in #2 above shows that black candidate Charles Evers lost to a white candidate in 1979 in his election bid for the Mississippi State Senate from District 37.

13. The information described in #2 above shows that black candidate W.H. Thomas, Sr. lost to a white candidate in 1979 in his election contest for the Mississippi State Senate from district 32.

14. The information described in #2 and #3 above shows that in the 1979 election, black candidate Clayton Henderson won election to the Mississippi House from District 9 over a white candidate by a margin of only 289 votes. The totals were 2735 (52.79%) for Henderson and 2446 (47.21%) for his white opponent. That district has been reduced from a 66.41 percent black VAP district in 1978 to one which has a 58.22 percent black VAP in 1982.

15. The information described in #2 and #3 above demonstrates that, in the 1979 election, black candidate David Jordan lost the Democratic primary in House District 34 to a white candidate by a 71 vote margin—2263 to 2192. The black VAP in the district was 68.71 percent in 1978, but has been reduced to 63.97 percent in the 1982 plan.

16. The information described in #2 and #3 above shows that black attorney Edward Blackmon lost the 1979 democratic primary to a white candidate in House District 59 by a total of 3199 to 3136—a 63 vote margin. In the general election, the white candidate beat black independent George Nichols, also an attorney, 2971 to 2886—an 85 vote margin. That district had a 65.04 percent black VAP under the 1978 plan, while the corresponding district under the 1982 plan drops to 63.06 percent black VAP.

17. The information described in #2 and #3 shows that in 1979 black candidate David Green won election from House District 98 over a white candidate by 300 votes—3904 (52%) to 3604 (48%). That district was 60.00 percent black VAP under the 1978 plan, but the

black VAP has been reduced to 57.38 percent for the corresponding district in the 1982 plan.

/s/ _____
ROBERT B. MCDUFF

_____
Notary Public

My commission expires _____.

EXHIBIT A TO AFFIDAVIT OF ROBERT B. MCDUFF—
HOUSE OF REPRESENTATIVES

District #	Total 1978-B%	Total 1982-B%	VAP 1978-B%	VAP 1982-B%
5-5	55.92	54.66	50.38	49.12
6-6	33.21	22.78	29.30	20.72
8-8	38.45	38.36	32.90	34.07
*9-9	69.80	63.98	66.41	58.22
10-10	46.94	36.51	42.07	31.27
11-11	50.37	55.17	46.07	50.79
13-13	36.95	42.07	31.89	36.93
21-21	42.44	27.67	39.15	25.15
22-22	35.44	41.30	32.32	36.73
24-24	42.47	46.59	38.91	43.05
25-25	40.34	40.26	35.63	34.58
*26-26	73.82	78.85	69.83	75.43
27-27	51.20	51.41	44.04	44.76
28-29	67.97	71.54	63.06	67.04
29-28	52.59	49.27	45.18	41.91
30-	69.97	—	65.15	—
31-30	60.55	62.91	57.04	59.20
32-31	63.26	63.19	57.72	57.58
33-32	56.89	42.98	51.56	37.95
34-33	70.58	65.91	68.71	63.97
35-34	42.38	52.41	38.21	47.33
36-48	52.48	61.33	47.38	56.99
38-36	50.00	50.00	45.58	45.11
*40-38	67.56	69.42	64.71	64.98
42-40	43.69	22.76	38.30	18.89
43-41	49.46	50.60	42.13	43.30
48-46	39.83	38.59	35.47	33.42
*49-47	69.93	67.29	65.91	62.91
50-	68.43	—	63.79	—

EXHIBIT A TO AFFIDAVIT OF ROBERT B. MCDUFF—
HOUSE OF REPRESENTATIVES—Continued

District #	Total 1978-B%	Total 1982-B%	VAP 1978-B%	VAP 1980-B%
*51-49	80.25	82.06	75.89	78.14
52-50	53.33	52.41	46.72	45.78
53-51	53.87	61.30	49.10	56.80
54-52	39.83	30.89	33.45	24.80
55-53	43.38	43.15	40.23	38.78
56-54	44.89	17.90	40.27	16.09
57-55	35.28	63.69	32.71	58.42
58-56	49.27	48.92	44.79	44.58
59-57	71.28	68.89	65.04	63.06
60-58	46.15	43.10	42.20	39.07
*67-67	86.09	82.30	82.09	77.28
*68-68	88.66	75.70	85.53	70.28
*69-69	87.92	77.69	84.83	74.51
*70-70	94.46	96.72	92.41	96.17
75-63	45.03	71.25	40.44	65.86
77-76	50.96	49.45	47.24	46.00
81-80	47.54	51.50	44.74	46.40
*84-82	71.06	66.47	67.18	62.72
*87-85	78.61	78.61	76.76	75.82
92-91	40.88	41.65	38.24	37.38
94-98	36.41	45.58	33.35	41.85
*95-94	67.85	67.45	61.97	62.99
97-93	39.66	25.37	37.06	23.96
*98-96	60.96	60.36	60.00	57.38
99-97	41.41	40.60	37.66	36.94
100-99	38.18	31.66	34.78	28.49
*104-103	72.99	68.35	68.19	63.49
111-110	62.35	64.12	56.23	57.88
*119-119	58.72	60.67	53.68	54.72

EXHIBIT B TO AFFIDAVIT OF ROBERT B. MCDUFF—SENATE

District # '78-'82	Total 1978-B%	Total 1982-B%	VAP 1978-B%	VAP 1982-B%
1-1	23.59	17.83	20.41	15.61
2-2	47.18	41.87	41.79	37.82
8-8	39.86	36.42	36.32	—
10-10	51.13	44.57	46.42	39.32
11-11	64.98	53.19	59.41	45.34
12-12	60.60	62.08	53.76	54.73
13-13	63.64	67.56	59.16	63.55
14-14	59.13	56.76	55.19	51.10
15-15	48.74	47.00	43.66	41.49
20-20	61.83	58.12	56.49	52.12
21-21	55.77	59.75	51.05	55.19
22-22	50.94	54.27	45.39	48.67
23-23	57.66	60.72	52.62	55.92
24-24	37.39	35.98	34.33	32.92
25-25	39.95	27.29	32.45	—
*27-27	81.99	76.25	77.35	70.98
*28-28	71.85	71.14	69.44	68.55
29-29	28.77	30.85	25.53	27.65
30-19	40.33	36.20	37.39	32.31
32-32	56.89	59.53	53.39	54.69
37-36	64.14	64.82	61.76	61.42
38-37	52.03	52.31	47.42	48.76
39-38	44.63	42.25	41.02	37.80